

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Bonta and Gonzalez)
(Coauthor: Senator Anderson)

December 1, 2014

An act to amend ~~Section 15626~~ Sections 15370, 15601, 15620, 15621, 15626, 15627, 15632, and 19203 of, to add Section 15621.5 to, and to add and repeal Article 5 (commencing with Section 15645) to Chapter 9 of Division 15 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Mullin. Elections: statewide recounts.

(1) *Existing law prohibits a county elections official from opening a ballot after it is counted and sealed, except in certain circumstances, including a recount.*

This bill would require a county elections official to store sealed ballots in a manner facilitating the retrieval of any particular ballot in that event.

(2) *Existing law requires the Secretary of State to adopt regulations relating to the use of voting systems in recounting ballots.*

This bill would also require the Secretary of State to adopt regulations relating to the charges a county elections official may impose when conducting a manual recount.

(3) *Existing law establishes procedures by which a voter may request a recount of the votes cast in an election following completion of the official canvass. Under Existing law requires a voter to make this request within 5 days beginning on the 29th day after the election.*

This bill would instead permit a voter to file a request for a recount within 5 days beginning on the 30th day after the election.

(4) Any time during the conduct of a recount and for 24 hours thereafter, existing law permits any other voter to request a recount of any precincts in an election for the same office, slate of presidential electors, or measure not recounted as a result of the original request. Existing law also provides that, where applicable, a voter requesting a recount may select whether the recount shall be conducted manually, or by means of the voting system used originally, or both.

This bill would instead require a voter to select whether the recount is to be conducted manually, or by means of the voting system used originally, but not both. This bill would also specify that if more than one voter requests a recount of the same office, slate of presidential electors, or measure, and at least one request is for a manual recount, then the county elections official of any county subject to multiple requests is only obligated to conduct one manual recount of the ballots subject to the request, and that those results will control.

(5) Under existing law, the voter seeking ~~the~~ a recount is required, before the recount is commenced and at the beginning of each subsequent day, to deposit with the elections official the amount of money required by the elections official to cover the cost of the recount for that day.

This bill would ~~require the Secretary of State to order an automatic permit a voter to request a state-funded manual recount of all votes cast for a statewide office, the office of President of the United States, or a state ballot measure if the difference in the number of votes received is less than or equal to 0.1%, the lesser of 1000 votes or 0.015%, as specified. By imposing~~ This bill would also require a county elections official to review rejected ballots as part of a state-funded recount. This bill would repeal the provisions relating to state-funded recounts as of January 1, 2023.

(6) Under existing law, upon completion of a recount showing that a different candidate was nominated or elected, that a different presidential slate of electors received a plurality of the votes, or that a measure was defeated instead of approved or approved instead of defeated, the result of the recount in each affected precinct is entered and is thereafter considered the official return of the affected precincts. Existing law provides that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null

and void unless each vote cast for the office, slates, or measure in any county specified in the request for recount is recounted.

This bill would instead provide that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast statewide for the office, slates, or measure is recounted.

(7) Existing law requires the Secretary of State to certify or conditionally approve a voting system prior to any election at which it is to be used, as specified. Existing law prohibits the Secretary of State from certifying or conditionally approving a voting system or part of a voting system that uses paper ballots if the paper cannot maintain its integrity and readability throughout the retention period.

This bill would also prohibit the Secretary of State from certifying or conditionally approving a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit.

By imposing new duties on local elections officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 15370 of the Elections Code is amended
- 2 to read:
- 3 15370. (a) After ballots are counted and sealed, the elections
- 4 official may not open any ballots nor permit any ballots to be
- 5 opened except as permitted in Sections 15303 and 15304, or in the
- 6 event of a recount.
- 7 (b) The county elections official shall store sealed ballots in a
- 8 manner facilitating the retrieval of any particular ballot in the
- 9 event of a recount.
- 10 SEC. 2. Section 15601 of the Elections Code is amended to
- 11 read:

1 15601. (a) The Secretary of State, within the Secretary of
2 State's existing budget, shall adopt regulations no later than January
3 1, 2008, for each voting system approved for use in the state and
4 specify the procedures for recounting ballots, including vote by
5 mail and provisional ballots, using those voting systems.

6 (b) *The Secretary of State shall adopt regulations, no later than*
7 *January 1, 2018, establishing uniform guidelines for charges a*
8 *county elections official may impose when conducting a manual*
9 *recount pursuant to this chapter.*

10 SEC. 3. *Section 15620 of the Elections Code is amended to*
11 *read:*

12 15620. (a) Following completion of the official canvass and
13 again following completion of any postcanvass risk-limiting audit
14 conducted pursuant to Section 15560, any voter may, within five
15 days thereafter, file with the elections official responsible for
16 conducting an election in the county wherein the recount is sought
17 a written request for a recount of the votes cast for candidates for
18 any office, for slates of presidential electors, or for or against any
19 measure, provided the office, slate, or measure is not voted on
20 statewide. The request shall specify on behalf of which candidate,
21 slate of electors, or position on a measure (affirmative or negative)
22 it is filed.

23 If
24 (b) *If* an election is conducted in more than one county, the
25 request for the recount may be filed by any voter within five days,
26 beginning on the ~~29th~~ 30th day after the election, with the elections
27 official of, and the recount may be conducted within, any or all of
28 the affected counties.

29 For
30 (c) *For* the purposes of this section, "completion of the canvass"
31 shall be presumed to be that time when the elections official signs
32 the certified statement of the results of the election except that, in
33 the case of a city election, if a city council canvasses the returns
34 itself and does not order the elections official to conduct the
35 canvass, "completion of the canvass" shall be presumed to be that
36 time when the governing body declares the persons elected or the
37 measures approved or defeated.

38 SEC. 4. *Section 15621 of the Elections Code is amended to*
39 *read:*

1 15621. (a) Following completion of the official canvass any
2 voter may, within five days beginning on the ~~29th~~ 30th day after
3 a statewide election, file with the Secretary of State a written
4 request for a recount of the votes cast for candidates for any
5 statewide office or for or against any measure voted on statewide.
6 Additionally, any voter may file with the Secretary of State a
7 written request for a recount of the votes cast for candidates for
8 any statewide office or for or against any measure voted on
9 statewide within five days following completion of any postcanvass
10 risk-limiting audit conducted pursuant to Section 15560. A request
11 filed pursuant to this section shall specify in which county or
12 counties the recount is sought and shall specify on behalf of which
13 candidate, slate of electors, or position on a measure (affirmative
14 or negative) it is filed.

15 ~~The~~

16 (b) ~~The~~ Secretary of State shall forthwith send by registered
17 mail one copy of the request to the elections official of each county
18 in which a recount of the votes is sought.

19 ~~All~~

20 (c) All the other provisions of this article shall apply to recounts
21 conducted under this section.

22 SEC. 5. Section 15621.5 is added to the Elections Code, to
23 read:

24 15621.5. If more than one voter requests a recount of the same
25 office, slate of presidential electors, or measure pursuant to Section
26 15620 or 15621, and at least one request is for a manual recount,
27 the county elections official of a county subject to multiple requests
28 as described in this section shall conduct only one manual recount
29 of the ballots subject to recount, the result of which shall be
30 controlling.

31 ~~SECTION 1.~~

32 SEC. 6. Section 15626 of the Elections Code is amended to
33 read:

34 15626. The recount shall be commenced not more than seven
35 days following the receipt by the elections official of the request
36 or order for the recount under Section 15620, 15621, or 15645 and
37 shall be continued daily, Saturdays, Sundays, and holidays
38 excepted, for not less than six hours each day until completed. The
39 recount shall not be commenced until the first day following
40 notification of the individuals specified in Section 15628.

1 *SEC. 7. Section 15627 of the Elections Code is amended to*
2 *read:*

3 15627. (a) If in the election ~~which~~ *that* is to be recounted the
4 votes were recorded by means of a punchcard voting system or by
5 electronic or electromechanical vote tabulating devices, the voter
6 who files the declaration requesting the recount ~~may~~ *shall* select
7 whether the recount shall be conducted manually, or by means of
8 the voting system used ~~originally, or both.~~ *originally.*

9 (b) *Notwithstanding subdivision (a), a county may recount vote*
10 *by mail and provisional ballots in a manner other than that*
11 *requested by the voter.*

12 ~~(b)~~

13 (c) For purposes of direct recording electronic voting systems,
14 “conducted manually” means that either the paper record copies
15 or the voter verified paper audit trail of the electronically recorded
16 vote are counted manually, as selected by the voter who requests
17 the recount.

18 *SEC. 8. Section 15632 of the Elections Code is amended to*
19 *read:*

20 15632. In lieu of the returns as reported in the official canvass,
21 upon completion of the recount showing that a different candidate
22 was nominated or elected, that a different presidential slate of
23 electors received a plurality of the votes, or that a measure was
24 defeated instead of approved or approved instead of defeated, there
25 shall be entered the result of the recount in each precinct affected,
26 which result shall, for all purposes thereafter, be the official returns
27 of those precincts for the office, slates of presidential electors, or
28 measure involved in the recount. If the office, slates of presidential
29 electors, or measure are not voted on statewide, the results of any
30 recount which is not completed by counting the votes in each and
31 every precinct in the jurisdiction within which votes were cast on
32 the candidates for the office, on the slates of electors, or on the
33 measure in question shall be declared null and void. If the office,
34 slates of presidential electors, or measure are voted on statewide,
35 the results of any recount will be declared null and void where
36 there is not recounted each vote cast *statewide* for the office, slates,
37 or ~~measure in any county specified in the request for recount filed~~
38 ~~with the Secretary of State.~~ *measure.*

1 ~~SEC. 2.~~

2 SEC. 9. Article 5 (commencing with Section 15645) is added
3 to Chapter 9 of Division 15 of the Elections Code, to read:

4
5 Article 5. ~~Automatic~~ State-funded Recounts
6

7 15645. (a) (1) Within five days after the Secretary of State
8 files a statement of the vote, as required by subdivision (b) of
9 Section 15501, ~~the Secretary of State shall order an automatic~~ any
10 voter may request a state-funded manual recount of all votes cast
11 for a statewide office or state ballot measure if any of the following
12 occurs:

13 (A) The official canvass of returns in a statewide primary
14 election shows that the difference in the number of votes received
15 by the second and third place candidates for a statewide office is
16 less than or equal to ~~one-tenth the lesser of 1000 votes or~~
17 ~~one-and-a-half~~ of 1 percent of the number of all votes cast for ~~both~~
18 ~~candidates; that office~~ except as provided in paragraph (2).

19 (B) The official canvass of returns in a statewide general election
20 shows that the difference in the number of votes received by the
21 two candidates receiving the greatest number of votes for a
22 statewide office is less than or equal to ~~one-tenth the lesser of 1000~~
23 ~~voters or one-and-a-half~~ of 1 percent of the number of all votes
24 cast for ~~both candidates; that office~~.

25 (C) The official canvass of returns in a statewide election shows
26 that the difference in the number of votes cast for and against a
27 state ballot measure is less than or equal to ~~one-tenth the lesser of~~
28 ~~1000 votes or one-and-a-half~~ of 1 percent of the number of all
29 votes cast on the measure.

30 (2) ~~The Secretary of State~~ A voter shall not ~~order an automatic~~
31 ~~request a state-funded~~ manual recount of all votes cast for the
32 office of Superintendent of Public Instruction pursuant to this
33 section if the official canvass of returns in a statewide primary
34 election shows that a candidate received a majority of all votes
35 cast.

36 (3) For purposes of this subdivision, “statewide office” means
37 the office of Governor, Lieutenant Governor, Attorney General,
38 Controller, Insurance Commissioner, Secretary of State,
39 Superintendent of Public Instruction, Treasurer, or Member of the
40 United States Senate.

(b) Within five days after the Secretary of State files a statement of the vote, as required by subdivision (b) of Section 15501, ~~the Secretary of State shall order an automatic~~ *any voter may request a state-funded* manual recount of all votes cast for the office of President of the United States if either of the following occurs:

(1) The official canvass of returns in a statewide presidential primary election for a political party that received the greatest or second-greatest number of votes in that presidential primary election shows that the difference in the number of votes received by the first and second place candidates for the nomination of that party for the office of President is less than or equal to ~~one-tenth the lesser of 1000 votes or one-and-a-half of~~ of 1 percent of the number of all votes cast for ~~both candidates; the office of President.~~

(2) The official canvass of returns in a statewide general election shows that the difference in the number of votes received by the two candidates receiving the greatest number of votes for the office of President is less than or equal to ~~one-tenth the lesser of 1000 votes or one-and-a-half of~~ of 1 percent of the number of all votes cast for ~~both candidates; the office of President.~~

(c) *If a state-funded recount is conducted pursuant to this section, no other recount shall be conducted.*

~~(e) It is the intent of the Legislature to fully~~

(d) *The State shall reimburse counties for costs resulting from conducting an automatic a manual recount required by pursuant to this section in an expeditious manner upon certification of those costs. A candidate shall not be charged for an automatic manual recount required by this section.*

15646. (a) Upon ordering a recount pursuant to subdivision (a) or (b) of Section 15645, the Secretary of State shall notify the elections official of each county and shall direct the county elections officials to recount all the votes cast for the office or for and against the state ballot measure. ~~The~~

(b) (1) *While conducting a recount pursuant to Section 15645, a county elections official shall also review ballots rejected pursuant to Section 15154 to ensure that no ballots were improperly discarded during the initial canvass.*

(2) *The process of reviewing rejected ballots pursuant to subdivision (a) shall be open to members of the public, including persons associated with a campaign or measure.*

1 (c) ~~The elections official in each county shall commence the~~
2 ~~recount within seven days of receiving notice under this section.~~
3 ~~complete a recount pursuant to this section as follows:~~

4 (1) *In a primary election, by three business days before the*
5 *ballot-printing deadline.*

6 (2) *In a general election, within 60 days of the voter's request*
7 *for a recount.*

8 15647. All the provisions of Article 3 (commencing with
9 Section 15620), except Sections 15620, 15621, 15622, 15623,
10 15624, and 15627, shall apply to this article unless otherwise
11 provided herein.

12 15648. The Secretary of State may adopt, amend, and repeal
13 rules and regulations necessary for the administration of this article.

14 15649. *This article shall remain in effect only until January 1,*
15 *2023, and as of that date is repealed, unless a later enacted statute,*
16 *that is enacted before January 1, 2023, deletes or extends that*
17 *date.*

18 SEC. 10. *Section 19203 of the Elections Code is amended to*
19 *read:*

20 19203. The Secretary of State shall not certify or conditionally
21 approve ~~a~~ *either of the following:*

22 (a) A voting system or a part of a voting system that uses paper
23 ballots unless the paper used for the ballots is of sufficient quality
24 that it maintains its integrity and readability throughout the
25 retention period specified in Chapter 4 (commencing with Section
26 17300) of Division 17.

27 (b) *A voting system that cannot facilitate the conduct of a ballot*
28 *level comparison risk-limiting audit.*

29 ~~SEC. 3.~~

30 SEC. 11. If the Commission on State Mandates determines
31 that this act contains costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.